

REMARKS

The Office Action mailed October 30, 2008 (hereinafter, "Office Action") has been reviewed and the Examiner's comments considered. Claims 1-2, and 6-25 are pending in this application. Claims 1, 6-8, 17, and 19 have been amended herein, support for which may be found in the originally filed application at, for example, paragraph [0033] and originally filed dependent claim 12. Claims 12, 13, 16, and 18 are cancelled without prejudice herein. No new subject matter has been added.

Claim Rejections - 35 U.S.C. § 102

Claims 1, 2, 6-14, 16-22, 24, and 25 stand rejected under 35 U.S.C. 102(b) as being anticipated by USPN 4,029,095 to Pena et al. (hereinafter, "Pena"). Applicants respectfully traverse this rejection.

Each independent claim recites fluid flow through the pump, valves, or system, powered or aided by gravity. Specifically, Independent Claim 1, incorporating subject matter from previously dependent claim 12, recites, *inter alia*, "wherein said inflow one-way valves and said outflow one-way valves allow fluid passage through said inflow and outflow valves when said pump is so positioned such that all power for fluid flow is provided by gravity alone." Independent claim 17 recites as amended, *inter alia*, "wherein the first one-way valve and the second one-way valve allow fluid passage through the pump body when the pump body is so positioned such that all power for fluid flow is provided by gravity." Independent claim 19 recites as amended, *inter alia*, "wherein the pump is so positioned such that power for fluid flow is provided by gravity." Independent claim 24 recites, *inter alia*, "positioning the manually operable pump to flow fluid from the body cavity to the fluid receptacle with the aid of gravity."

In reference to the rejected dependent claim 12, the Office Action asserts that Pena discloses the manually operable pump wherein a pair of one-way valves are providing one-way flow (col. 2, lines 21-26), and therefore is fully capable of providing the flow by gravity alone if positioned vertically. (Office Action, p. 4). Applicants respectfully disagree, as the manual

pump of Pena cannot be run by gravity, but requires the compression and expansion of the pump by a user.

Pena discloses a device for circulating treating fluid through the nasal fossae including a pump with a suction inlet and a pressure outlet. (Pena, abstract). Referring to FIG. 2, Pena shows and describes the pump means 11 as an elastic bulb which is capable of being manually compressed and which is capable of expanding when released by the operator. (Pena, col. 4, ll. 45-48). A one-way valve means 12 is situated at the suction inlet of the pump means 11 and permits fluid to flow only when the pump means 11 expands. (Pena, col. 4, ll. 54-58). Specifically, Pena describes the one-way valve means 12 as follows:

Thus, the one-way valve 12 is urged by a spring 14 to a position closing the opening 16 in a transverse wall of the valve which is surrounded by a tubular portion thereof interconnecting one end of the elastic bulb 11 with one end of the container means 6 as illustrated. The spring 14 normally maintains the valve 12 in its closed position closing the openings 16. When the bulb 11 is compressed, the valve 12 will remain closed. However, when it expands, in response to the suction created by this expansion the spring 14 yields to enable the valve 12 to open in the manner illustrated in FIG. 2, thus permitting the fluid to flow only from the container means 6 into the elastic bulb 11.

(Pena, col. 4, l. 58 – col. 5, l. 3).

Pena further shows and describes a one-way valve means 13 at the pressure outlet of the pump means 11 that permits fluid to flow through the openings 17 into the pressure tubular means only when the bulb 11 is compressed by the operator to increase the pressure in the interior of the bulb 11. (Pena, col. 5, ll. 4-6, 17-27). As described, the disclosed valve means and pump would not work with the aid of gravity, but only under the compression and expansion of the pump body by an external user. Therefore, Pena fails to show or describe a pump or valves to permit fluid flow powered by gravity or with the aid of gravity.

Accordingly, for at least these reasons, independent claims 1, 17, 19, and 24 are patentable over Pena. Claims 2, 6-11, 13-14, 20-22, and 25 are patentable because they depend from a patentable independent claim, and also because they recite features not shown or described by the cited art. Therefore, Applicants request favorable reconsideration and withdrawal of the rejections under 35 U.S.C. § 102.

Claim Rejections - 35 U.S.C. § 103

Claims 15 and 23 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Pena. Applicants respectfully traverse this rejection.

Without conceding the allegations in the office action, Applicants submit that claims 15 and 23 are patentable at least because they depend from a patentable independent claim, in view of the above. Therefore, Applicants request favorable reconsideration and withdrawal of the rejections under 35 U.S.C. § 103.

Conclusion

In view of the above, each of the presently pending claims in this application is believed to be in immediate condition for allowance. Accordingly, the Examiner is respectfully requested to withdraw the outstanding rejections of the claims and to pass this application to issue. If it is determined that a telephone conference would expedite the prosecution of this application, the Examiner is invited to telephone the undersigned at the number given below.

It is noted that the remarks herein do not constitute, nor are they intended to be, an exhaustive enumeration of the distinctions between the cited references and the claimed invention. Rather, the distinctions identified and discussed herein are presented solely by way of example. Consistent with the foregoing, the discussion herein should not be construed to prejudice or foreclose future consideration by Applicants of additional or alternative distinctions between the claims of the present application and the references cited by the Examiner and/or the merits of additional or alternative arguments.

In the event the U.S. Patent and Trademark Office determines that an extension and/or other relief is required, Applicants petition for any required relief including extensions of time and authorize the Commissioner to charge the cost of such petitions and/or other fees due in connection with the filing of this document to Deposit Account No. 50-2191 referencing docket no. 1016720071P. However, the Commissioner is not authorized to charge the cost of the issue fee to the Deposit Account.

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Respectfully submitted,

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